

10 CSR 10-2.390 Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Act

(1) Definitions.

(A) Terms used but not defined in this rule shall have the meaning given them by the Clean Air Act (CAA), Titles 23 and 49 U.S.C., other United States Environmental Protection Agency (EPA) regulations, other United States Department of Transportation (DOT) regulations, or other State or local air quality or transportation rules, in that order of priority. Definitions for some terms used in this rule may be found in 10 CSR 10-6.020.

(B) Additional definitions specific to this rule are as follows:

1. Applicable implementation plan—defined in section 302(q) of the CAA; the portion(s) of the implementation plan for ozone, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA;

2. CAA—the Clean Air Act, as amended;

3. Cause or contribute to a new violation for a project—

A. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

B. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area;

4. Consultation in the transportation conformity process—one (1) party confers with another identified party, provides all information to that party needed for meaningful input, and considers the views of that party and responds to those views in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action;

5. Control strategy implementation plan revision—the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B));

6. Control strategy period—with respect to ozone precursors (volatile organic compounds (VOCs) and oxides of nitrogen (NOx)), that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling ozone, as appropriate. This period ends when the state submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area;

7. Design concept—the type of facility identified by the project, for example, freeway, expressway, arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.;

8. Design scope—the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, for example, number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.;

9. DOT—the United States Department of Transportation;

10. EPA—the Environmental Protection Agency;

11. FHWA—the Federal Highway Administration of DOT;

12. FHWA/FTA project—any highway or transit project which is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system;

13. FTA—the Federal Transit Administration of DOT;

14. Forecast period—with respect to a transportation plan, the period covered by the transportation plan pursuant to 23 CFR part 450;

15. Highway project—an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to—

A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;

B. Have independent utility or significance, that is, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

16. Horizon year—a year for which the transportation plan describes the envisioned transportation system in accordance with section (6) of this rule;

17. Incomplete data area—any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area;

18. Increase the frequency or severity—to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented;

19. ISTEA—the Intermodal Surface Transportation Efficiency Act of 1991;

20. Maintenance area—any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA;

21. Maintenance period—with respect to a pollutant or pollutant precursor, that period of time beginning when a state submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area, and lasting for twenty (20) years, unless the applicable implementation plan specifies that the maintenance period shall last for more than twenty (20) years;

22. Metropolitan planning area—the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out;

23. Metropolitan planning organization (MPO)—that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making. The Mid-America Regional Council is the MPO for the Kansas City metropolitan area and the organization responsible for conducting the planning required under section 174 of the CAA;

24. Milestone—defined in section 182(g)(1) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved;

25. Motor vehicle emissions budget—that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the director, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for NO_x for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in VOCs in milestone years required for reasonable further progress. For purposes of meeting the conformity test required under sections (16)—(18) of this rule, the motor

vehicle emissions budget in the applicable Missouri State Implementation Plan shall be combined with the motor vehicle emissions budget for the same pollutant in the applicable Kansas State Implementation Plan;

26. National ambient air quality standards (NAAQS)—those standards established pursuant to section 109 of the CAA;

27. NEPA—the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.);

28. NEPA process completion—with respect to FHWA or FTA, the point at which there is a specific action to make a formal final determination that a project is categorically excluded, to make a finding of no significant impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA;

29. Nonattainment area—any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists;

30. Phase II of the interim period—with respect to a pollutant or pollutant precursor, that period of time after December 27, 1993, lasting until the earlier of the following:

A. Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the director, and have been subject to a public hearing; or

B. The date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the state's failure to submit any such plans and the state, MPO, and DOT have received notice of such finding of the state's failure to submit any such plans. The precise end of Phase II of the interim period is defined in section (22) of this rule;

31. Project—a highway project or transit project;

32. Protective finding—a determination by EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form

as required by CAA section 110(a)(2)(A);

33. Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act—any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees;

34. Regionally significant project—a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum:

A. All minor arterial and higher functionally classified roadways, based on the MPO classification system; and

B. Any project that increases the capacity (other than a turning lane in the vicinity of an intersection) of a minor arterial or greater classification, based on the MPO classification system;

C. Any project that changes the access between roadways of minor arterial or greater classification, based on the MPO classification system;

D. Any project for the construction of a new facility that is a minor arterial or greater classification roadway, based on the MPO classification system; and

E. All fixed guideway transit facilities that offer an alternative to regional highway travel;

35. Standard—a national ambient air quality standard;

36. Statewide transportation improvement program (STIP)—a staged, multi-year, intermodal program of transportation projects which is consistent with the statewide

transportation plan and planning processes and metropolitan transportation plans, transportation improvement programs (TIPs) and processes, developed pursuant to 23 CFR part 450;

37. Statewide transportation plan—the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process, pursuant to 23 CFR part 450;

38. Submarginal area—any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81;

39. Transit—mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services;

40. Transit project—an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to—

A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;

B. Have independent utility or independent significance, that is, be a reasonable expenditure even if no additional transportation improvements in the area are made; and

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

41. Transitional area—any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81;

42. Transitional period—with respect to a pollutant or pollutant precursor, that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the director, and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional

period is defined in section (22) of this rule;

43. Transportation control measure (TCM)—any measure that is specifically identified and committed to in the applicable implementation plan that is either one (1) of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule;

44. Transportation improvement program (TIP)—a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450;

45. Transportation plan—the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450; and

46. Transportation project—a highway project or a transit project.

(2) Applicability.

(A) Action Applicability.

1. Except as provided for in subsection (2)(C) of this rule or section (27), conformity determinations are required for—

A. The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

B. The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

C. The approval, funding, or implementation of FHWA/FTA projects.

2. Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, section (23) applies to such projects if they are regionally significant.

(B) Geographic Applicability. The provisions of this rule shall apply in Clay, Jackson and Platte Counties for ozone and ozone precursor emissions of volatile organic compounds and nitrogen oxides.

(C) Limitations.

1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one (1) of the following major steps has occurred within the most recent three (3)-year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

2. A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the most recent three (3)-year period.

(3) Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain

the NAAQS. This priority shall be consistent, with statutory requirements for allocation of funds among states or other jurisdictions.

(4) Frequency of Conformity Determinations.

(A) Conformity determinations and conformity redeterminations for transportation plans, TIPS, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(B) Transportation Plans.

1. Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

2. All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in section (27) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.F. The conformity determination must be based on the transportation plan and the revision taken as a whole.

3. The existing conformity determination will lapse unless conformity of existing transportation plans is redetermined—

A. By May 25, 1995 (unless previously redetermined in accordance with 40 CFR part 51 subpart T); or

B. Within eighteen (18) months of EPA approval of an implementation plan revision which—

(I) Establishes or revises a transportation-related emissions budget (as required by CAA sections 175A(a), 182(b)(1), 182(c)(2)(A), and 182(c)(2)(B)); or

(II) Adds, deletes, or changes TCMS; and

C. Within eighteen (18) months of EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMS.

4. In any case, conformity determinations must be

made no less frequently than every three (3) years, or the existing conformity determination will lapse.

(C) Transportation Improvement Programs.

1. A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.

2. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in section (27) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.F.

3. After the MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six (6) months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in section (27) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.F. Otherwise, the existing conformity determination for the TIP will lapse.

4. In any case, conformity determinations must be made no less frequently than every three (3) years or the existing conformity determination will lapse.

(D) Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the most recent three (3)-year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

(5) Consultation.

(A) General. This section provides procedures for interagency consultation (federal, state, and local) and resolution of conflicts related to conformity determinations required to be made pursuant to 40 CFR parts 51 and 93. Such consultation procedures shall be undertaken by the MPO and its regional transportation policy advisory committee constituted under the provisions of ISTEA, and state and federal transportation agencies with federal, state and local air quality

agencies and the regional air quality policy advisory organization designated by the state air quality agencies under the provisions of CAA section 174. Consultation shall take place before making conformity determinations. (This means before adoption of the transportation plan or TIP.) Such consultation procedures shall be undertaken by federal, state and local air quality agencies and the regional air quality policy advisory organization designated by the state air quality agencies under the provisions of CAA section 174 with the MPO and its regional transportation policy advisory committee, and state and federal transportation agencies in developing the transportation related provisions of applicable implementation plans. Such procedures shall be consistent with and shall not be duplicative of procedures established under section 174 of the CAA.

(B) Interagency Consultation Procedures: General Factors.

1. Representatives of the MPO and its regional transportation policy advisory committee, state transportation agencies, state and local air quality agencies, and regional air quality policy advisory organization designated by the state air quality agencies under the provisions of CAA section 174 shall participate in an interagency consultation process in accordance with this section with each other and with FHWA and FTA and EPA on the development of the implementation plan, the list of TCMS in the applicable implementation plan, the unified planning work program under 23 CFR section 450.314, the transportation plan, the TIP, any revisions to the preceding documents, and all conformity determinations required by this rule. Use of existing advisory committee structures will be the preferred mechanism for interagency consultation during the early stages of planning or programming processes. Expansion of representation will occur as necessary to assure that consulting agencies have the opportunity to receive background information as it is developed and share ideas and concerns early in the planning or programming process. Where consultation takes place outside of existing advisory committee structures, local government transportation interests will be represented by four (4) persons (representing transit and roadway interests from each state) appointed by the chairs of the regional transportation policy advisory committee and local government air quality interests will be represented by four persons (at least one (1) from each state) appointed by the

chairs of the regional air quality advisory organization. The air quality representation shall not duplicate representation from transportation agencies.

2. Roles and responsibilities of consulting agencies.

A. It shall be the affirmative responsibility of the agency(ies) with the responsibility for preparing the final document to initiate the consultation process by notifying other participants of the proposed planning or programming process for the development of the following planning or programming documents: the regional transportation plan and the regional TIP, including revisions, the unified planning work program, and any conformity determinations, with the MPO as the responsible agency; the statewide transportation plan and STIP for northern Clay and northern and western Platte Counties, with the state transportation agency as the responsible agency; and the state air quality implementation plans with motor vehicle emissions budgets and control strategies, including revisions, with the state air quality agency in cooperation with the MPO as the responsible agencies.

B. The adequacy of the consultation process for each type of document listed in subparagraph (5)(B)2.A. of this rule shall be assured by the agency responsible for that document, by meeting the requirements of parts (5)(B)2.A.(I)—(III) of this rule.

(I) The proposed planning or programming process must include at a minimum the following:

(a) The roles and responsibilities of each agency at each stage in the planning process, including technical meetings;

(b) The proposed organizational level of regular consultation;

(c) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(d) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas; and

(e) A process for responding to the

significant comments of involved agencies.

(II) The time sequence and adequacy of the consultation process will be reviewed and determined for each type of planning or programming document by consensus of the consultation agencies at a meeting convened by the responsible agency for that purpose. These procedures shall subsequently become binding on all parties until such time as the procedures are revised by consensus of the consulting agencies.

(III) As a matter of policy, planning or programming processes must meet two (2) tests:

(a) Consultation opportunities must be provided early in the planning process. Early participation is intended to facilitate sharing of information needed for meaningful input and to allow the consulting agencies to confer with the responsible agency during the formative stages of the plan or program. At a minimum, proposed transportation planning or programming processes must specifically include opportunities for the consulting agencies to confer upon the conformity determinations for transportation plans and TIPS prior to consideration of draft documents by the regional air quality advisory organization, the regional transportation policy advisory committee or the state transportation agency for the transportation planning area outside of the metropolitan planning area for transportation planning. Air quality planning processes must specifically include opportunities for the consulting agencies to confer upon the motor vehicle emissions budget before the budget is considered by the regional air quality advisory organization, the regional transportation policy advisory committee, and the state air quality agency. Additionally, if TCMs are to be considered in transportation plans, TIPS or the state implementation plan, specific opportunities to consult upon TCMs by air quality and transportation agencies must be provided; and

(b) Additional consultation opportunities must be provided prior to any final action by any responsible agency listed in subparagraph (5)(B)2.A. of this rule. Prior to formal action approving any plan or program, the consulting agencies must be given an opportunity to communicate their views in writing to the responsible agency. The responsible agency must consider the views of the consulting agencies and respond in writing to those views in a timely and complete manner prior to any final action on any plan or program. Such views and written response shall be made part of the record

of any decision or action. Opportunities for formal consulting agency comment may run concurrent with other public review time frames. Participation or lack of participation by a consulting agency early in the planning or programming process has no bearing on their opportunity to submit formal comment prior to official action by the responsible agency.

3. Consultation on planning assumptions.

A. Representatives of the conformity consulting agencies shall meet no less frequently than once per calendar year for the specific purpose of reviewing changes in transportation and air quality planning assumptions that could potentially impact the state implementation plan (SIP) motor vehicle emissions inventory, motor, vehicle emissions budget and/or conformity determinations.

B. It shall be the affirmative responsibility of each of the consulting agencies to advise the MPO of any pending changes in their planning assumptions. The MPO shall be responsible for convening a meeting to review planning assumptions in August of each year, unless an alternate date is agreed to by the consulting agencies, and at such other times as any of the consulting agencies proposes a change to any of these planning inputs. The purpose of the meeting(s) is to share information and evaluate the potential impacts of any proposed changes in planning assumptions, and to inform each other regarding the timetable and scope of any upcoming studies or analyses that may lead to future revision of planning assumptions.

C. If any consulting agency proposes to undertake a data collection, planning or study process to evaluate a planning assumption that may have a significant impact on the state implementation plan (SIP) motor vehicle emissions inventory, motor vehicle emissions budget and/or conformity determinations, all of the consulting agencies shall be given an opportunity to provide advisory input into that process. Examples of data, planning or study topics that may be of interest in this context include (but are not limited to):

(I) Estimates of vehicle miles traveled;

- (II) Estimates of current vehicle travel speeds;
- (III) Regional population and employment projections;
- (IV) Regional transportation modeling assumptions;
- (V) The methodology for determining future travel speeds;
- (VI) The motor vehicle emissions model; and
- (VII) The methodology for estimating future vehicle miles traveled.

D. Whenever a change in air quality or transportation planning assumptions is proposed that may have a significant impact on the SIP motor vehicle emissions inventory, motor vehicle emissions budget and/or conformity determinations, the agency proposing the change must provide all of the consulting agencies an opportunity to review the basis for the proposed change. All consulting agencies shall be given at least thirty (30) days to evaluate the impact of a proposed change in planning assumptions prior to final action by the agency proposing the change. (In the case of an EPA motor vehicle emissions model change, this would occur as part of the federal rulemaking process.)

4. It shall be the affirmative responsibility of the responsible agency to maintain a complete and accurate record of all agreements, planning and programming processes, and consultation activities required under this rule and to make these documents available for public inspection upon request. In addition, it shall be the affirmative responsibility of the responsible agency to supply the following information for inclusion in a notebook maintained within the offices of each of the conformity consulting agencies and at local public libraries. The MPO shall be responsible for distribution of information to the libraries. Copies of the following information shall be provided to all of the other consulting agencies and additional copies as the MPO prescribes shall be provided to the MPO for placement in public libraries in the Kansas City region:

A. The full text of any transportation or air quality document specified in paragraph (5)(B)2. of this rule and undergoing public comment pending final action by the responsible agency. Copies for distribution to local libraries must be delivered to the MPO at least three (3) business days prior to the beginning of the public comment period;

B. Summary of planning and programming processes for transportation plans, TIPS and SIPs identified in paragraph (5)(B)2. of this rule, after approval by consensus of the consulting agencies; and

C. Reasonably understandable summaries of final planning and programming documents for the general public. This summary information must be accompanied by a complete list of all supporting information, reports, studies, and texts which provide background or further information, along with the location of the documents and instructions on how they can be accessed. Summaries of final documents shall be provided to the other consulting agencies and to the MPO within fourteen (14) days of final approval by the responsible agency. Summaries of the following documents are specifically required:

(I) Regional unified planning work program;

(II) Official projections of regional population and employment;

(III) Regional transportation plan;

(IV) State transportation plans for areas within the air quality planning area but outside of the metropolitan planning area for transportation;

(V) Regional transportation improvement program;

(VI) State transportation improvement program for areas within the air quality planning area but outside of the metropolitan planning area for transportation;

(VII) State air quality plan and emissions inventories, including motor vehicle emissions budgets; and

(VIII) The most recent analysis upon which a transportation/air quality conformity determination was made for a transportation plan or TIP.

(C) Interagency Consultation Procedures: Specific Processes.

1. An interagency consultation process in accordance with subsection (5)(B) of this rule involving the MPO, the regional transportation policy advisory committee, the regional air quality advisory organization, the state transportation and air quality agencies, EPA, FHWA and FTA shall be undertaken for the following:

A. Evaluating and choosing model(s) and associated methods and assumptions to be used in regional motor vehicle emissions analyses, including vehicle miles traveled (VMT) forecasting. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding changes in planning assumptions;

B. Determining which other projects in addition to those functionally classified as minor arterial or higher should be considered regionally significant for the purpose of regional emissions analysis (in addition to fixed guideway systems or extensions that offer an alternative to regional highway travel) and for determining which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding changes in planning assumptions;

C. Evaluating whether projects otherwise exempted from meeting the requirements of this rule should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes;

D. Developing a list of TCMs to be included in the applicable implementation plan. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the state air quality implementation plan development process;

E. Making a determination whether past obstacles

to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

F. Notifying all conformity consulting agencies of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in section (27) or (28). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes. The MPO shall notify all conformity consulting agencies in writing within seven (7) calendar days after taking action to approve such exempt projects. The notification shall include enough information about the exempt projects for the consulting agencies to determine their agreement or disagreement that the projects are exempt under section (27) or (28) of this rule;

G. Determining whether the project is included in the regional emissions analysis supporting the current conforming TIP's conformity determination, even if the project is not strictly included in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the TIP programming process;

H. Determining what forecast of VMT to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or applicable implementation plans, or making conformity determinations. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions;

I. Determining the definition of reasonable professional practice for the purposes of section (24). This

process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions; and

J. Determining whether the project sponsor or the MPO has demonstrated that the requirements of sections (16) and (17) are satisfied without a particular mitigation or control measure, as provided in subsection (26)(D). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes;

2. An interagency consultation process in accordance with subsection (5)(B) of this rule involving the MPO, the regional air quality advisory organization, the regional transportation policy advisory committee and the state air quality and transportation agencies shall be undertaken for the following:

A. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in section (4). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions when there is a significant change in any planning assumption (examples: new regional forecast of population and employment, actual VMT estimates significantly different from planning projections, etc.); and

B. Consulting on emissions analyses for transportation activities which cross the borders of the MPO or nonattainment or maintenance area or air basin. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule.

3. Prior to establishing a metropolitan planning area for transportation planning that does not include the entire nonattainment or maintenance area, the interagency consultation process described in subsection (5)(B) of this rule shall be supplemented by a formal memorandum of agreement, incorporated in the applicable state implementation plan, executed by the MPO and the state air quality and transportation agencies for cooperative planning and analysis. This executed memorandum of agreement shall specify procedures for determining conformity of all regionally significant transportation projects outside the metropolitan planning boundary for transportation planning and within the nonattainment or maintenance area.

A. The interagency consultation process established by the executed memorandum of agreement for such an area shall apply in addition to all other consultation requirements.

B. At a minimum, any memorandum of agreement establishing a state transportation planning area outside of the MPO metropolitan planning area for transportation planning, but within the nonattainment or maintenance area, shall provide for state air quality agency concurrence in conformity determinations for areas outside of the metropolitan planning boundary for transportation planning, but within the nonattainment or maintenance area. Such agreement shall also establish a process involving the MPO and the state transportation agency in cooperative planning and analysis for determining conformity of all projects outside the metropolitan planning area for transportation planning and within the nonattainment or maintenance area in the context of the total regional transportation system that serves the nonattainment or maintenance area.

4. An interagency consultation process shall be undertaken to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes. At a minimum, the disclosure procedures shall meet the requirements of subparagraph (5)(B)4.A.—C. of this rule.

A. The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding shall disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion when any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator

authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of a regionally significant project. The sponsor of any potential regionally significant project shall disclose to the MPO each project for which alternatives have been identified through the NEPA process, and, in particular, any preferred alternative that may be a regionally significant project. This information shall be provided to the MPO in accordance with the time sequence and procedures established under paragraph (5)(B)2. of this rule for each transportation planning and TIP development process.

B. In the case of any such regionally significant project that has not been disclosed to the MPO and other agencies participating in the consultation process before action is taken to adopt or approve, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of section (23).

C. For the purposes of paragraph (5)(C)4. of this rule, the phrase adopt or approve of a regionally significant project means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

5. An interagency consultation process shall be undertaken in accordance with subsection (5)(B) of this rule involving the MPO and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (5)(C)4. of this rule but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of section (24). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule as it relates to planning

assumptions.

6. An interagency consultation process in accordance with subsection (5)(B) of this rule involving the MPO, the regional transportation policy advisory committee, the regional air quality advisory organization, and the state transportation and air quality agencies shall be undertaken for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (for example, household/travel transportation surveys). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule as it relates to planning assumptions.

(D) Resolving Conflicts.

1. Any conflict among state agencies or between state agencies and the MPO regarding a final action on any conformity determination by the MPO on a plan or program subject to these consultation requirements shall be escalated to the governor(s), if the conflict cannot be resolved by the heads of the involved agencies. Such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

2. After the MPO has notified the state air quality agencies in writing of the disposition of all air quality agency comments on a proposed conformity determination, state air quality agencies shall have fourteen (14) calendar days from the date that the written notification is received to appeal such proposed determination of conformity to the governor of Missouri. If the Missouri air quality agency appeals to the governor of Missouri, the final conformity determination will automatically become contingent upon concurrence of the governor of Missouri. If the Kansas air quality agency presents an appeal to the governor of Missouri and Missouri agencies or the MPO, the final conformity determination will automatically become contingent upon concurrence of both the governor of Missouri and the governor of Kansas. The Missouri air quality agency shall provide notice of any appeal under this subsection to the MPO, and the state transportation agencies, and the Kansas air quality agency. If neither state air quality agency appeals to the governor(s) within fourteen (14) days of receiving written notification, the MPO may proceed with the final conformity determination.

3. The governor of Missouri may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the state, but not to the head or staff of the Missouri air quality agency, the Missouri Air Conservation Commission or any local air quality agency, the Missouri transportation agency or the Missouri Highway commission, or any agency that has responsibility for only one (1) of these functions, or the MPO.

(E) Public Consultation Procedures.

Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process. This process will provide opportunity for public review and comment prior to taking formal action on a conformity determination for a transportation plans and TIPs, consistent with the requirements of 23 CFR part 450, including part 450.316(b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this rule. In addition, these agencies must specifically respond in writing to all public comments stating that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law (for example, NEPA). The opportunity for public involvement provided under this subsection shall include access to information, emissions data, analyses and modeling assumptions used to perform a conformity determination, in accordance with the provisions of paragraph (5)(B)4. of this rule, and the obligation of any such agency to consider and respond to significant comments. No transportation plan, TIP or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this subsection, without regard to whether the DOT has certified any process under 23 CFR part 450.

(6) Content of Transportation Plans.

(A) Transportation Plans Adopted After January 1, 1995, in serious, severe, or extreme ozone nonattainment areas. The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

1. The agency or organization developing the transportation plan, after consultation in accordance with section (5), may choose any years to be horizon years, subject to the following restrictions:

A. Horizon years may be no more than ten (10) years apart;

B. The first horizon year may be no more than ten (10) years from the base year used to validate the transportation demand planning model;

C. If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year; and

D. The last horizon year must be the last year of the transportation plan's forecast period.

2. For these horizon years—

A. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and section (5);

B. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

C. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(B) Moderate Areas Reclassified to Serious. Ozone nonattainment areas which are reclassified from moderate to serious must meet the requirements of subsection (6)(A) of this rule within two (2) years from the date of reclassification.

(C) Transportation Plans for Other Areas. Transportation plans for other areas must meet the requirements of subsection (6)(A) of this rule at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of sections (9)—(21).

(D) Savings. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

(7) Relationship of Transportation Plan and TIP Conformity with the NEPA Process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in sections (9)—(21) for projects not from a TIP before NEPA process completion.

(8) Fiscal Constraints for Transportation Plans and TIPS.

Transportation plans and TIPS shall be fiscally constrained and meet the requirements of 23 CFR 450.322(b)(11) and 450.324(e) as in effect on the date of adoption of this rule in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with section (5) of this rule.

(9) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General.

(A) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in sections (10)—(21) as listed in Table 1 in subsection (9)(B) of this rule, and must comply with all applicable conformity requirements of implementation plans and this rule and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPS, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(B) The following table indicates the criteria and procedures in sections (10)—(21) which apply for each action in each time period:

Table 1. Conformity Criteria**During all periods:**

Action	Criteria
Transportation Plan	Sections (10),(11),(12),(13)(B)
TIP	Sections (10),(11),(12),(13)(C)
Project (From a conforming plan and TIP)	Sections (10),(11),(12),(14),(15)
Project (Not from a conforming plan and TIP)	Sections (10),(11),(12),(13)(D),(14)

Phase II of the interim period:

Action	Criteria
Transportation Plan	Section (19)
TIP	Section (20)
Project (From a conforming plan and TIP)	No additional criteria
Project (Not from a conforming plan and TIP)	Section (21)

Transitional period:

Action	Criteria
Transportation Plan	Sections (16),(19)
TIP	Sections (17),(20)
Project (From a conforming plan and TIP)	No additional criteria
Project (Not from a conforming plan and TIP)	Sections (18),(21)

Control strategy and maintenance periods:

Action	Criteria
Transportation Plan	Section (16)
TIP	Section (17)
Project (From a conforming plan and TIP)	No additional criteria
Project (Not from a conforming plan and TIP)	Section (18)

(10) Criteria and Procedures: Latest Planning Assumptions.

(A) During all periods the conformity determination, with respect to all other applicable criteria in sections (11)—(21), shall be based upon the most recent planning assumptions in force

at the time of the conformity determination. The conformity determination must satisfy the requirements of subsections (10)(B)—(F) of this rule.

(B) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO, and shall be subject to consultation in accordance with section (5).

(C) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(D) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(E) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(F) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by section (5).

(11) Criteria and Procedures: Latest Emissions Model.

(A) During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the state or area is used for the conformity analysis.

(B) Conformity analyses for which the emissions analysis was begun before the *Federal Register* notice of availability of the latest emission model, or during the grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPS. The previous model may

also be used for projects if the analysis was begun during the grace period or before the *Federal Register* notice of availability, provided no more than three (3) years have passed since the draft environmental document was issued.

(12) Criteria and Procedures: Consultation.

All conformity determinations shall be made according to the consultation procedures in this rule, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Once the implementation plan revision has been submitted to EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

(13) Criteria and Procedures: Timely Implementation of TCMS.

(A) During all periods the transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMS from the applicable implementation plan.

(B) For transportation plans, this criterion is satisfied if the following two (2) conditions are met:

1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMS in the applicable implementation plan which are eligible for funding under Title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan; and

2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(C) For TIPS, this criterion is satisfied if the following conditions are met:

1. An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMS which are eligible for funding under Title 23 U.S.C. or the Federal Transit Act, are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMS are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to

implementation of the TCMs have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs includes demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions;

2. If federal funding intended for TCMs in the applicable implementation plan has previously been programmed but is reallocated to projects in the TIP other than TCMs (or if there are no other TCMs in the TIP, to projects in the TIP other than projects which are eligible for federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program), and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform; and

3. Nothing in the TIP interferes with the implementation of any TCM in the applicable implementation plan.

(D) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

(14) Criteria and Procedures: Currently Conforming Transportation Plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of 40 CFR part 51 subpart T.

(A) Only one (1) conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination

on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of section (4) of this rule.

(B) This criteria is not required to be satisfied at the time of project approval for TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of 40 CFR part 51 subpart T are satisfied.

(15) Criteria and Procedures: Projects From a Plan and TIP.

(A) During all periods the project must come from a conforming transportation plan and TIP. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of section (9) for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of subsection (15)(B) of this rule and from a conforming TIP if it meets the requirements of subsection (15)(C) of this rule. Special provisions for TCMs in an applicable implementation plan are provided in subsection (15)(D) of this rule.

(B) A project is considered to be from a conforming transportation plan if one (1) of the following conditions applies:

1. For projects which are required to be identified in the transportation plan in order to satisfy section (6) of this rule, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(C) A project is considered to be from a conforming TIP if the following conditions are met:

1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its

contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures must be obtained from the project sponsor or operator as required by subsection (26)(A) in order for the project to be considered from a conforming TIP. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(D) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

(16) Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan).

(A) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in section (29). This criterion may be satisfied if the requirements in subsections (16)(B) and (C) of this rule are met.

(B) A regional emissions analysis shall be performed as follows:

1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

- A. VOC as an ozone precursor; or
- B. NOx as an ozone precursor;

2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the

time frame of the transportation plan;

3. The emissions analysis methodology shall meet the requirements of section (24);

4 For areas with a transportation plan that meets the content requirements of subsection (6)(A) of this rule, the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

5. For areas with a transportation plan that does not meet the content requirements of subsection (6)(A) of this rule, the emissions analysis shall be performed for—

A. The last year of the plan's forecast period;

B. The attainment year, if the attainment year is in the time span of the transportation plan; and

C. Any other years in the time span of the transportation plan that are no more than ten (10) years apart. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(C) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (16)(B)1. of this rule the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

(17) Criteria and Procedures: Motor Vehicle Emissions Budget(TIP).

(A) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in section (29). This criterion may be satisfied if the requirements in subsections (17)(B) and (C) of this rule are met.

(B) For areas with a conforming transportation plan that fully meets the content requirements of subsection (6)(A) of this rule, this criterion may be satisfied without additional regional emissions analysis if—

1. Each program year of the TIP is consistent with the federal funding which may be reasonably expected for that year, and required state/local matching funds and funds for state/local funding-only projects are consistent with the revenue sources expected over the same period; and

2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that—

A. The TIP contains all projects which must be started in the TIP's time frame in order to achieve the highway and transit system envisioned by the transportation plan in each

of its horizon years;

B. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

C. The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan; or

3. If the requirements in paragraphs (17)(B)1. and 2. are not met, then—

A. The TIP may be modified to meet those requirements; or

B. The transportation plan must be revised so that the requirements in paragraphs (17)(B) 1. and 2. of this rule are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (17)(B)1. and 2. of this rule.

(C) For areas with a transportation plan that does not meet the content requirements of subsection (6)(A) of this rule, a regional emissions analysis must meet all of the following requirements:

1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan;

2. The analysis methodology shall meet the requirements of subsection (24)(C); and

3. The regional emissions analysis shall satisfy the requirements of paragraphs (16)(B)1. and 5. and subsection (16)(C) of this rule.

(18) Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not From a Plan and TIP).

(A) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with

the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in section (29). It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(B) For areas with a conforming transportation plan that meets the content requirements of subsection (6)(A) of this rule—

1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that—

A. Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

B. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

C. The design concept and scope of the project is not significantly different from that described in the transportation plan; and

2. If the requirements in paragraph (18)(B)1. of this rule are not met, a regional emissions analysis must be performed as follows:

A. The analysis methodology shall meet the requirements of section (24);

B. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the time frame of the transportation plan. The analysis must include emissions from

all previously approved projects which were not from a transportation plan and TIP; and

C. The regional emissions analysis shall meet the requirements of paragraphs (16)(B)1., and 4. and subsection (16)(C) of this rule.

(C) For areas with a transportation plan that does not meet the content requirements of subsection (6)(A) of this rule, a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if—

1. The analysis methodology meets the requirements of subsection (24)(C);

2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the time frame of the transportation plan; and

3. The regional emissions analysis satisfies the requirements of paragraphs (16)(B)1., and 5. and subsection (16)(C) of this rule.

(19) Criteria and Procedures: Interim Period Reductions in Ozone Areas (Transportation Plan).

(A) A transportation plan must contribute to emissions reductions in ozone nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in section (29). It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (19)(B)—(F) of this rule.

(B) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten (10) years apart. The first analysis year shall be no later than the first milestone year. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five (5) years beyond the first analysis year. The last year of the transportation plan's

forecast period shall also be an analysis year.

(C) Define the baseline scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in sections (27) and (28) need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;

2. All ongoing travel demand management or transportation system management activities; and

3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three (3) years of the previously conforming transportation plan or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the baseline scenario if one (1) of the following major steps has not occurred within the most recent three (3)-year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the action scenario, as described in subsection (19)(D) of this rule.)

(D) Define the action scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in sections (27) and (28) need not be explicitly considered):

1. All facilities, services, and activities in the baseline scenario;

2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except the regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted and funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;

4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(E) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the baseline and action scenarios and determine the difference in regional VOC and NOx emissions (unless the administrator has made a determination under section 182(b) of the CAA that additional NOx reductions would not contribute to attainment in the area and has not notified the state or MPO that a subsequent violation of the ozone standard rescinds that determination) between the two (2) scenarios. The analysis must be performed for each of the analysis years according to the requirements of section (24). Emissions in milestone years which are between the analysis years may be determined by interpolation.

(F) This criterion is met if the regional VOC and NO_x emissions predicted in the action scenario are less than the emissions predicted from the baseline scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional emissions analysis must show that the action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

(20) Criteria and Procedures: Interim Period Reductions in Ozone Areas (TIP).

(A) A TIP must contribute to emissions reductions in ozone nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in section (29). It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (20)(B)–(F) of this rule.

(B) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year. The analysis years shall be no more than ten (10) years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five (5) years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(C) Define the baseline scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in sections (27) and (28) need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;
2. All ongoing travel demand management or transportation system management activities; and
3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three (3) years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity

determination on the TIP after November 24, 1993, a project may not be included in the baseline scenario if one (1) of the following major steps has not occurred within the past three (3) years; NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the action scenario, as described in subsection (20)(D) of this rule.)

(D) Define the action scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the time frame of the transportation plan. It will include the following (except that projects listed in sections (27) and (28) need not be explicitly considered):

1. All facilities, services, and activities in the baseline scenario;

2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;

3. All travel demand management programs and transportation systems management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted and funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;

4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding

sources and commitments leading toward their implementation and completion by the analysis year.

(E) Estimate the emissions predicted to result in each analysis year from travel on the transportation system defined by the baseline and action scenarios, and determine the difference in regional VOC and NOx emissions (unless the administrator has made a determination under section 182(b) of the CAA that additional NOx reductions would not contribute to attainment in the area and has not notified the state or MPO that a subsequent violation of the ozone standards rescinds that determination) between the two (2) scenarios. The analysis must be performed for each of the analysis year according to the requirements of section (24). Emissions in milestone years which are between analysis years may be determined by interpolation.

(F) This criterion is met if the regional VOC and NOx emissions predicted in the action scenario are less than the emissions predicted from the baseline scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional emissions analysis must show that the action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

(21) Criteria and Procedures: Interim Period Reductions for Ozone Areas (Project Not from a Plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in section (29). This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of section (19) and which includes the transportation plan and project in the action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the baseline scenario must include the project with its original design concept and scope, and the action scenario must include the project with its new design concept and scope.

(22) Transition From the Interim Period to the Control Strategy Period.

(A) Control Strategy Implementation Plan Submissions.

1. The transportation plan and TIP must be demonstrated to conform by eighteen (18) months from the date of the state's initial submission to EPA of each control strategy implementation plan establishing a motor vehicle emission budget. If conformity is not determined by eighteen (18) months from the date of submission such control strategy implementation plan, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made, until the transportation plan and TIP have been demonstrated to conform.

2. For areas not yet in the control strategy period for a given pollutant, conformity shall be demonstrated using the motor vehicle emissions budget(s) in a submitted control strategy implementation plan revision for that pollutant beginning ninety (90) days after submission, unless EPA declares such budget(s) inadequate for transportation conformity purposes. The motor vehicle emissions budget(s) may be used to determine conformity during the first ninety (90) days after its submission if EPA agrees that the budget(s) are adequate for conformity purposes.

(B) Disapprovals.

1. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the state, MPO, and DOT, which initiates the sanction process under CAA sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse one hundred twenty (120) days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

2. Notwithstanding paragraph (B)1. of this rule, if EPA disapproves the submitted control strategy implementation plan revision but makes a protective finding, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. No transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision

fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(C) Failure to Submit and Incompleteness. For areas where EPA notifies the state, MPO, and DOT of the state's failure to submit or submission of an incomplete control strategy implementation plan revision, which initiates the sanction process under CAA section 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from EPA regional administrator.

(D) Federal Implementation Plans. When EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by this section because of that state failure is removed.

(E) Projects. If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (22)(E)1. and 2. of this rule must be met.

1. Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the state air agency must be consulted on how the emissions, which the existing transportation plan and TIP's conformity determination estimates for the action scenario (as required by sections (19)-(21)), compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

2. In the event of unresolved disputes on such project-level conformity determinations, the state air quality agency may escalate the issue to the governor consistent with the procedure in subsection (5)(D) of this rule, which applies for any state air quality agency comments on a conformity determination.

(F) Redetermination of the Conformity of the Existing Transportation Plan and TIP According to the Transitional Period Criteria and Procedures.

1. The redetermination of the conformity of the

existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (22)(A)1. of this rule) does not require a new emissions analysis and does not have to satisfy the requirements of sections (10) and (11) if—

A. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

B. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

2. A redetermination of conformity as described in paragraph (22)(D)1. of this rule is not considered a conformity determination for the purposes of paragraphs (4)(B)4. or (4)(C)4. regarding the maximum intervals between conformity determinations. Conformity must be determined according to all applicable criteria and procedures of section (9) within three (3) years of the last determination which did not rely on paragraph 1. of this subsection.

(G) Nonattainment Areas Which Are Not Required to Demonstrate Reasonable Further Progress and Attainment. If an area listed in section (29) submits a control strategy implementation plan revision, the requirements of subsections (A) and (E) of this section apply. Because the areas listed in section (29) are not required to demonstrate reasonable further progress and attainment and therefore have no CAA deadline, the provisions of subsection (B) and (C) of this section do not apply to these areas.

(H) Maintenance Plans. If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by CAA section 175A is submitted to EPA, the requirements of subsection (22)(A) of this rule apply, with the maintenance plan submission treated as a control strategy implementation plan revision for the purposes of those requirements.

(23) Requirements for Adoption or Approval of Projects by Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under Title 23

U.S.C or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of section (14) of this rule and the requirements of one (1) of the following subsections (23)(A)—(E) are met:

(A) The project comes from a conforming plan and program consistent with the requirements of section (15);

(B) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly included in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(C) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of section (18);

(D) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of section (21); or

(E) During the transitional period, the project satisfies the requirements of both subsections (23)(C) and (D) of this rule.

(24) Procedures for Determining Regional Transportation-Related Emissions.

(A) General Requirements.

1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP, and all other regionally significant projects which are disclosed to the MPO as required by section (5) of this rule. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects

of TCMS and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

2. The emissions analysis may not include for emissions reduction credit any TCMS which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

4. Notwithstanding paragraph (24)(A)3. of this rule, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in sections (16)—(18), but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval, may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of sections (16)—(18) are satisfied.

5. A regional emissions analysis for the purpose of satisfying the requirements of sections (19)—(21) may account for the programs in paragraph (24)(A)4. of this rule, but the

same assumptions about these programs shall be used for both the baseline and action scenarios.

6. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation in accordance with section (5) if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(B) Serious, severe, and extreme ozone nonattainment areas after January 1, 1995. Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (24)(B)1.—4. of this rule.

1. A network-based transportation demand model(s) relating travel demand and transportation system performance to land use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

A. The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

B. The network-based model(s) must be validated against ground counts for a base year that is not more than ten (10) years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

C. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

D. Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit

currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

E. Free-flow speeds on network links shall be based on empirical observations;

F. Peak and off-peak travel demand and travel times must be provided;

G. Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

H. The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use, and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

I. A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

J. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

K. Consideration of emissions increases from construction-related congestion is not specifically required.

2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor(s) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be

given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

4. Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(C) Areas which are not serious, severe, or extreme ozone nonattainment areas, or before January 1, 1995.

1. Procedures which satisfy some or all of the requirements of subsection (24)(B) of this rule shall be used in all areas not subject to subsection (24)(B) of this rule in which those procedures have been the previous practice of the MPO.

2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles traveled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(25) Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan (or Implementation Plan Submission).

(A) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not

interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan—

1. Emissions from all sources, will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

2. Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

3. Emissions, will be lower than needed to provide for continued maintenance.

(B) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that safety margin, the state may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit motor vehicle sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the director and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(C) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without an implementation plan revision or an applicable implementation plan which establishes mechanisms for such trades.

(D) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan

submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(26) Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.

(A) Prior to making a conformity determination, the MPO, other recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor or operator enforceable written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by sections (16)—(21).

(B) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and must comply with the obligations of such commitments.

(C) Enforceable written commitments to mitigation or control measures must be obtained prior to a positive conformity determination, and project sponsors must comply with such commitments.

(D) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of sections (16) and (17) are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under section (5). The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of sections (16) and (17) and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

(27) Exempt Projects.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the

absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies pursuant to section (5), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. The state and the MPO must assure that exempt projects do not interfere with TCM implementation.

Table 2. Exempt Projects

Safety

Railroad/highway crossing
Hazard elimination program
Safer nonfederal-aid system roads
Shoulder improvements
Increasing sight distance
Safety improvement program
Traffic control devices and operating assistance other than
 signalization projects
Railroad/highway crossing warning devices
Guardrails, median barriers, crash cushions
Pavement resurfacing or rehabilitation
Pavement marking demonstration
Emergency relief (23 U.S.C. 125)
Fencing
Skid treatments
Safety roadside rest areas
Adding medians
Truck climbing lanes outside the urbanized area
Lighting improvements
Widening narrow pavements or reconstructing
 bridges (no additional travel lanes)
Emergency truck pullovers

Mass Transit

Operating assistance to transit agencies
Purchase of support vehicles
Rehabilitation of transit vehicles
Purchase of office, shop, and operating
 equipment for existing facilities
Purchase of operating equipment for vehicles
 (for example, radios, fareboxes, lifts, etc.)
Construction or renovation of power, signal
 and communications systems
Construction of small passenger shelters and

- information kiosks
- Reconstruction or renovation of transit buildings and structures (for example, rail or bus, buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
- Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
- Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet
- Construction of new bus or rail storage/ maintenance facilities categorically excluded in 23 CFR part 771

Air Quality

- Continuation of ride-sharing and van-pooling promotion activities at current levels
- Bicycle and pedestrian facilities

Other

- Specific activities which do not involve or lead directly to construction, such as—
 - Planning and technical studies
 - Grants for training and research programs
 - Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
 - Federal-aid systems revisions
- Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action
- Noise attenuation
- Advance land acquisitions (23 CFR part 712 or 23 CFR part 771)
- Acquisition of scenic easements
- Plantings, landscaping, etc.
- Sign removal
- Directional and informational signs
- Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)
- Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes

(28) Projects Exempt From Regional Emissions Analyses.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. These projects

may proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies pursuant to section (5), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3. Projects Exempt from Regional Emissions Analyses

Intersection channelization projects
Intersection signalization projects at individual intersections
Interchange reconfiguration projects
Changes in vertical and horizontal alignment
Truck size and weight inspection stations
Bus terminals and transfer points

(29) Special Provisions for Nonattainment Areas Which Are Not Required to Demonstrate Reasonable Further Progress and Attainment.

(A) Application. This section applies in the following areas:

1. Marginal ozone areas;
2. Submarginal ozone areas;
3. Transitional ozone areas; and
4. Incomplete data ozone areas.

(B) Default Conformity Procedures. The criteria and procedures in sections (19)—(21) will remain in effect throughout the control strategy period for transportation plans, TIPS, and projects (not from a conforming plan and TIP) in lieu of the procedures in sections (16)—(18), except as otherwise provided in subsection (29)(C) of this rule.

(C) Optional Conformity Procedures. The state or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the state must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in sections

(16)—(18) apply in lieu of the procedures in sections
(19)—(21).

EPA Rulemakings

Description: The EPA approved an amendment to the rule which adopted specific revisions to the Federal transportation conformity rule contained in 40 C.F.R. 51.390-464 (Subpart T) as amended on November 14, 1995.

[illegible]

Description: The EPA approved a new regulation which takes final action to approve the State Implementation Plan (SIP) submittal by the state of Missouri for the purpose of fulfilling the requirements set forth in the EPA's Transportation Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 C.F.R. 51.396.

[illegible]

None.